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Chairman: Mr. Politi ..... (Italy)

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The meeting was called to order at 3.05 p.m.

Agenda item 158: Report of the United Nations Commission on International Trade Law on the work of its thirty-third session (*continued*) (A/55/17)

1. **Mr. Grainger** (United Kingdom) said he hoped that, by the end of 2000, the draft convention on assignment of receivables would be sufficiently advanced by the Working Group on International Contract Practices to enable its final approval at the next session of the United Nations Commission on International Trade Law (UNCITRAL). Although pleased by the adoption of the useful Legislative Guide on Privately Financed Infrastructure Projects, he was sceptical about the desirability or feasibility of preparing model legislative provisions without proof of substantial support from potential user countries; in view of its resource constraints, the Commission should instead focus its efforts on areas having a demonstrable need for action.

2. Turning to the subject of dispute resolution, he said that the United Kingdom would continue to support the activities of the Working Group on Arbitration, in which it had played an active part. While appreciating the argument against amending the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, he believed that a declaration could be a useful means of clarifying how the Convention should be interpreted. The United Kingdom also took a close interest in the work on the enforceability of interim measures of protection, which should not be treated in the same way as awards under the Convention. Notwithstanding that it was undesirable for the court concerned to reopen discussion on the merits, the judge should nevertheless be allowed a measure of discretion. Stressing the need to avoid duplication of effort and waste of resources, he strongly believed that the efforts of the international community in the field of arbitration should focus on the work UNCITRAL, it being the competent authority on matters of global applicability in international trade law.

3. With reference to future activities of the Commission, he urged caution in taking on work such as elaborating a complete model law in the very difficult area of security interests, although it could be valuable to develop model law provisions focusing on specific topics, such as investment securities held by intermediaries. Endorsed by the Group of Western European and Other States as a candidate for membership of the Commission, the United Kingdom looked forward to playing its part in the development of such future work.

4. **Mr. Kuindwa** (Kenya) said that, in the context of his country's efforts to improve its share in international trade, he appreciated the steady growth in the list of UNCITRAL texts. He supported all endeavours towards completion of the draft convention on assignment of receivables in the belief that its adoption would promote the availability of more affordable capital and credit to needy countries, thus facilitating the development of international trade to the equitable benefit of strong and weak economies alike. He favoured the preparation of a commentary on the convention for the benefit of developing countries which lacked the expertise or human resources to consider effectively and use the rules contained therein.

5. He welcomed the completion of the impressive UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects, which would play an important role in attracting private investment for improving infrastructure in the developing countries, and he agreed that the framework for the implementation of such projects should ensure their transparency, fairness and long-term sustainability with a view to enabling countries to reap the benefits. He also supported the decision to seek views from international organizations and States concerning the desirability and the feasibility of preparing a model law or model legislative provisions in the area of privately financed infrastructure projects.

6. Agreeing that the Working Group on Electronic Commerce should complete its work on the draft uniform rules on electronic signatures at its thirty-seventh session, he called on the Group to renew its commitment to building consensus as to their scope and content with a view to achieving the widest possible reception within the international community. He emphasized the importance of developing sound infrastructure in all countries in order to allow international trade to flourish within the parameters of electronic commerce. In that connection, he welcomed the proposal to undertake studies on the three topics of electronic contracting, dispute settlement and dematerialization of documents of title, which would improve international trade norms and permit effective business.

7. He hoped that consideration would be given to the possibility of his region hosting one of the valuable seminars and briefing missions held in the field of training and technical assistance, which were vital to clarifying the features of UNCITRAL texts. He sincerely thanked those Governments and international organizations which, in addition to providing such training and assistance to developing countries, had also assisted their travel to attend the meetings of the Commission. Lastly, he emphasized the need for the Legal Counsel to increase his efforts to impress upon the Secretary-General the importance of substantially increasing the human and financial resources available to the secretariat of the Commission in order to enable it to discharge its mandate with ease.

8. **Mr. Apata** (Nigeria) hoped that work on the remaining articles of the draft convention on assignment of receivables, which should be emphasized as a legal text aimed at increasing the availability of lower-cost credit, would be completed in timely fashion in order to facilitate its adoption at the fifty-sixth session of the General Assembly. He welcomed the adoption of the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects, which emphasized the positive elements already present in Nigeria's favourable foreign investment regime and which would assist developing countries to prepare or modernize their domestic legislation. Noting that private investment in infrastructure projects enabled the public sector to reallocate to other social needs the resources thus saved, he said that Nigeria would take steps to fine-tune its own domestic legislation in that area.

9. Expressing regret that requests for further seminars and briefing missions in connection with training and technical assistance had been denied owing to lack of resources, he supported the recommendation to request the Secretary-General to increase substantially both the human and financial resources available to the UNCITRAL secretariat and reiterated Nigeria's continued support as a member of the Commission for its future work.

10. **Mr. Al-Aradi** (Bahrain) said that international cooperation was essential to eliminating the legal obstacles to the equal and fair conduct of international trade without discrimination in the joint interests of all States, particularly the developing countries. Having noted that the participation of the private sector in financing infrastructure projects was key to making reductions in public spending, he remarked in a more general vein on the unnecessary duplication of efforts owing to the lack of coordination between UNCITRAL and other United Nations bodies working in the same field.

11. Bahrain had long played a prominent role as a strategic tax-free financial centre with a stable economy, a highly skilled workforce, a sound infrastructure, an open market and sophisticated communications systems. As such, it was home to a multitude of international and Islamic financial institutions and was also instrumental in the facilitation of international trade in the region through modern technologies such as electronic commerce, in which connection it had hosted numerous seminars and an international conference. Electronic commerce was now in widespread use by government departments, private business and individual consumers. It was also possible to access government information and conduct government business, such as payments, via the Internet. In equally common use in Bahrain was the facility of electronic banking.

12. **Ms. Kalema** (Uganda) expressed satisfaction with the progress achieved during the Commission's thirty-third session. She welcomed the work done on the draft convention on assignment of receivables, and supported the Commission's decision to delete the reference to receivables financing in the title of the instrument. Retaining the reference would have been inconsistent with the scope of the instrument, which extended beyond the financing of transactions. The Convention should be limited to contractual receivables. To include non-contractual receivables would unnecessarily delay completion of the draft, which she hoped would be completed in 2001.

13. She welcomed the adoption of the Legislative Guide on Privately Financed Infrastructure Projects. The developing world, which was endeavouring to attract private investment, attached great importance to the Guide. She hoped the secretariat would disseminate it as widely as possible.

14. Remarkable progress had been made in drafting the uniform rules on electronic signatures, a complex exercise which called for a common understanding of the legal issues involved. The Working Group had been urged to complete the draft at the Commission's next session, but she hoped it would nevertheless maintain its careful and thorough consideration of the rules.

15. She noted with interest the priority items suggested for possible future work on international commercial arbitration. With regard to insolvency law and transport law, she agreed with the Commission's recommendation that to avoid duplication, serious consideration should be given to the work being done by other bodies in those areas.

16. She commended the work of the secretariat on compiling the collection of case law on UNCITRAL texts (CLOUT), which was a useful tool for promoting the uniform interpretation and application of the texts.

17. The secretariat stood in need of more funds to expand its training and technical assistance activities. It was unfortunate that a number of requests for training had had to be turned down. Welcome contributions to the seminar programme had been made by Canada, Cyprus, France, Greece, Mexico, Switzerland and the United Kingdom. Those contributions directly benefited developing countries and countries in transition. She was grateful to Singapore for its contribution to the Trust Fund for Granting Travel Assistance to Developing States members of UNCITRAL. She hoped the Secretary-General would also substantially increase the resources available to the secretariat for its work.

18. **Mr. Mirzaee-Yengejeh** (Islamic Republic of Iran) reiterated his country's support for the Commission and its mandate. Over a period of three decades, the Commission had succeeded in developing a body of rules and guidance for commercial relations among nations. In the era of globalization, it was well equipped to play an even greater role, by examining the implications of that phenomenon and working to ensure equitable distribution of its benefits.

19. He was glad to note that during its thirty-third session, the Commission had succeeded in finalizing the Legislative Guide on Privately Financed Infrastructure Projects, containing 70 recommendations to legislatures. The Guide would be a useful tool for policy makers and legislatures in reviewing and updating their existing legislation on the subject. It should be disseminated as widely as possible.

20. He hoped the Working Group on International Contract Practices would be able to finalize the draft convention on assignment of receivables in time for it to be adopted at the Commission's next session. He endorsed the Commission's request to the secretariat to prepare and distribute commentaries to the draft articles. Commentaries would be helpful to legislatures when considering adoption of the future convention, and also to users engaged in its interpretation and application.

21. He appreciated the secretariat's efforts in the field of training and technical assistance, which should certainly continue in future. Training helped to foster understanding of the rules devised by the Commission and facilitated their universal acceptance. He therefore supported the Commission's recommendation in paragraph 442 of its report (A/55/17) that the Secretary-General be asked to increase substantially both the human and the financial resources available to its secretariat.

22. His delegation was concerned at the low level of participation by developing countries in the Commission's activities and working groups. In the era of globalization, their participation was more important than ever, and he urged both the Commission and the General Assembly to pursue their efforts to increase it.

23. **Mr. Bliznikas** (Lithuania) said that his Government attached great importance to the topics discussed during the Commission's thirty-third session, especially the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects, the draft convention on assignment of receivables, the draft uniform rules on electronic signatures, and the arbitration rules. He particularly welcomed the adoption of the Legislative Guide. Its recommendations would help domestic legislators and policy makers to establish a national legal framework favourable to private investment in public infrastructure. The recommendations should, however, be tested in practice before the Commission undertook any further work in that area.

24. He hoped the Commission would be able to adopt the draft convention on assignment of receivables at its 2001 session. As for rules of arbitration, which formed an important part of the legal framework of international trade, the Commission had a pivotal role to play in their development, and his delegation fully supported its work in that respect.

25. The process of unifying and harmonizing international trade law should be made more efficient and consistent by coordinating the work of the Commission, on a continuing basis, with that of other international organizations active in the same field. It

was especially important to do so when elaborating the rules on commercial arbitration and insolvency law.

26. His delegation welcomed the Commission's efforts in organizing seminars, symposia and briefing missions in a number of States, thereby promoting wider adoption of its instruments. He requested the secretariat to consider the possibility of organizing in Vilnius, with the full cooperation of his Government, a seminar or briefing for legislators, judges, arbitrators and other users of the UNCITRAL texts from the Baltic States.

27. **Mr. Troyjo** (Brazil) expressed appreciation of the Commission's continuing debate on the legal aspects of electronic commerce. With the advance of new information technologies and the expansion of international trade flows, it was essential to have a body of uniform trade law. In Brazil, the Commission's work had helped to fashion the legislation to facilitate electronic commerce that was soon to be adopted. He urged the Commission to continue its work in creating an atmosphere favourable to electronic transactions, which would enable all concerned to benefit from the vast potential of electronic commerce to generate prosperity. Model laws prepared by the Commission should be drafted as impartially as possible, to reflect the neutral character of technology in its application to trade.

28. He welcomed the conclusion of work on the Legislative Guide on Privately Financed Infrastructure Projects, which would be especially valuable for developing countries as a potential tool for creating business initiatives and attracting private investment. Brazil also attached great importance to the Commission's work in the field of commercial arbitration. With the exponential growth in international transactions, trade disputes would inevitably multiply, and the international community must have a set of guidelines to enable the parties to settle them in a transparent and fair manner. He also welcomed the progress made by the Commission in drafting model legislation in the areas of cross-border insolvency and the carriage of goods by sea.

29. **Mr. Shin Hyun-soo** (Republic of Korea) welcomed the adoption of the Legislative Guide on Privately Financed Infrastructure Projects, which should prove useful to domestic legislators and policy makers in establishing a legal framework favourable to private investment in public infrastructure. He shared the majority view in the Commission that specific legislative guidance, in the form of a model law or model legislative provisions, was both desirable and feasible. In view of the diversity of national legal traditions and administrative practices, however, it would be appropriate to test the Guide in practice before deciding whether to prepare a new instrument.

30. The draft convention on assignment of receivables should be considered for adoption at the Commission's thirty-fourth session. He therefore supported the decision to refer the text to a working group with agreed terms of reference and limited scope.

31. In view of the increasing need for legislation to facilitate electronic commerce, he welcomed the completion of the draft model law on electronic signatures.

32. It was important to bring into effect the conventions and model laws emanating from the work of the Commission. In that light, he welcomed the secretariat's endeavours to organize seminars in various countries to promote awareness and adoption of the Commission's work. His Government was grateful to the secretariat for the decision to hold a seminar in the Republic of Korea in November 2000. Although not a member of the Commission, his country intended to continue as an active participant in its work.

33. **Mr. Carp** (United States of America) commended the Commission on completing its work on the Legislative Guide on Privately Financed Infrastructure Projects, begun several years previously. The Guide could facilitate change and infrastructure development by drawing on the considerable pool of resources available in private sector capital markets. The Commission had thus kept pace with changes which had seen a continuing decline in direct governmental funding and a growth of new partnerships with private capital funding. The Guide had also illustrated the movement away from harmonization between existing legal systems and towards an agreement on standards, which could generate support from capital markets and promote economic improvements. The Commission had agreed to consider further work in the same field by beginning the preparation of a model law or model provisions to implement project finance. His delegation supported

that effort, which should be entrusted to a working group in order to ensure full participation by States.

34. The draft convention on assignment of receivables would offer substantial benefits for trade relationships generally, and in particular for developing and emerging States. There was little or no financing available from capital markets for some of such States, partly because of their older commercial finance laws. The fundamental provisions in the text to ensure their adoption of modern finance laws should therefore be retained if the draft convention was to have its due economic effect. The final meeting of the Working Group on International Contract Practices, to be held in December 2000, would focus on special provisions for, or exclusions of, specialized commercial sectors whose transactions were already regulated or subject to accepted practices which would not work under the draft convention. It was most important to ensure that such sectors were not inappropriately drawn into the scope of the draft convention, unless they sought inclusion.

35. He welcomed the action taken by the Commission, in the context of monitoring the implementation of the 1958 New York Convention, in instructing the Working Group on Arbitration to consider whether practices under the Convention could be harmonized in cases involving the validity of agreements to arbitrate and the use of interim measures of protection in support of arbitration. The decision to draft a new model law on conciliation, with a practical guide, which would go well with the Commission's other legislative texts on alternative dispute resolution, was also welcome.

36. The Commission had endorsed three instruments produced by the International Chamber of Commerce, including Incoterms 2000, the Uniform Rules for Contract Bonds and, most importantly, the Rules on International Standby Practices (ISP98), which his delegation believed should lead States to consider adopting the United Nations Convention on Independent Guarantees and Standby Letters of Credit. ISP98 itself, however, represented a step forward, in that its negotiation by banking associations in many countries was a direct outcome of the Convention and had been designed to harmonize with it. Adoption of the Convention would facilitate cross-border transactions, and he wondered whether other delegations were likely to seek to implement it. He noted that the UNCITRAL Model Law on Cross-Border Insolvency had been adopted by Mexico and was before the United States Congress for adoption. His delegation hoped that other States would follow suit.

37. The growth of electronic commerce offered commercial entities worldwide the opportunity to enter the stream of international trade, but he cautioned that — particularly in a rapidly developing field such as electronic commerce — the Commission's work should not be geared to regulating for regulation's sake nor to developing rules without knowing whether they promoted or hindered trade. His delegation was concerned that the proposed rules for electronic signature and message authentication systems, to be considered by the Commission in 2001, were not technology neutral, might induce overregulation of commercial transactions and had been formulated without full knowledge of their economic effect. It was to be hoped that the Commission would not adopt the same approach for future projects.

38. **Ms. Toomey** (Australia) said that her delegation, which had been involved with the work of the Commission since its inception and continued to participate actively in various working groups, welcomed the completion of the Commission's work on the Legislative Guide on Privately Financed Infrastructure Projects, which would, it was to be hoped, be widely used. The progress made in the preparation of the draft convention on assignment of receivables was also encouraging. It was particularly pleasing that the Working Group on Insolvency Law, in which her delegation participated actively, had been given a further mandate to investigate and develop insolvency regimes.

39. Her delegation welcomed the continuing development of the draft uniform rules on electronic signatures, which would encourage the growth of cross-border electronic commerce. Indeed, her Government had recently enacted legislation reflecting the concepts and provisions of the UNCITRAL Model Law on Electronic Commerce. Her delegation also attached importance to the Commission's continuing work in the areas of training and assistance and to the continued operation of the Case Law on UNCITRAL Texts, which was a valuable tool for international trade research, facilitating access to relevant developments around the world. In view of the importance of harmonizing international trade law and the Commission's achievements in that direction, her

delegation was concerned that the Commission should continue to receive the financial and personnel resources it needed.

40. **Mr. Gomaa** (Egypt) said that his delegation was encouraged by the adoption of the Legislative Guide on Privately Financed Infrastructure Projects, which would help Governments establish the appropriate legislation. It also welcomed the adoption of the first 17 articles of the draft convention on assignment of receivables, which would facilitate financing and access to credit at lower rates. It was to be hoped that the Commission would be able to finalize the text at its next session.

41. The Commission's work on electronic commerce was of particular interest, in view of the growing use of electronic communication. It was, however, an area where unequals met. The rules must therefore be acceptable to all States, regardless of their different legal, social and economic systems. Lastly, he commended the efforts of the Commission secretariat in organizing seminars and promoting awareness of international trade law, particularly through the Case Law on UNCITRAL Texts.

42. **Mr. Zhdanovich** (Belarus) said that at its thirty-third session the Commission had made excellent progress in developing international legal texts, in confirmation of its important role of unifying and harmonizing international trade law and eliminating legal barriers to international trade. He particularly commended the work of the Working Group on International Contract Practices and the adoption of the first 17 articles of the draft convention on assignment of receivables, although much remained to be done. The Working Group should not, however, reopen the discussion on the basic issues that had already been decided. His delegation hoped that the work would be finished in time for the draft convention to be submitted for adoption at the fifty-sixth session of the General Assembly, since it would provide the necessary protection for debtors in the case of an assignment of receivables, as well as extending the availability of capital and credit at more affordable rates, thus facilitating the development of international trade. The Analytical Commentary to the draft Convention on Assignment [in Receivables Financing] [of Receivables in International Trade] (A/CN.9/470) would form the ideal basis for the preparation of the commentary on the draft convention.

43. His delegation welcomed the adoption of the Legislative Guide on Privately Financed Infrastructure Projects, which would be of great use to Governments in legislating on such projects. In that connection, his delegation considered that a model law or model provisions should be developed as an aid to policy in countries lacking the qualified personnel or human resources required for the in-depth analysis of various issues discussed in the legislative guide.

44. The Commission's work on training and technical assistance was of great value, particularly for countries with an economy in transition, which did not always possess the necessary experience in trade and trade law. The work of the Commission secretariat in that field could play a key role in such countries' efforts to achieve economic integration. Indeed, his delegation would request the secretariat to consider the possibility of extending its training programmes for specialists from developing countries and countries in transition and to provide greater technical assistance in developing trade law in such countries. The Case Law on UNCITRAL Texts was also most valuable, giving judges, lawyers and other legal specialists the opportunity to take into account decisions in other countries when reaching their own decisions or conclusions or, indeed, in amending their decisions. It was particularly gratifying that the texts had become available on the Internet.

45. **Mr. Vamos-Goldman** (Canada) endorsed much of what has been said, which confirmed the need to strengthen the Commission. A larger membership and greater participation in the Commission's work would in turn serve to strengthen the hand of organizations dealing with State law. He therefore urged that consideration should be given to expanding the Commission. The secretariat should undertake research on the possible implications.

46. **Mr. Chan** (Chairman of the United Nations Commission on International Trade Law) welcomed the various comments and suggestions, from which the Commission would greatly benefit. He was glad that the Commission's needs had been recognized and hoped that the Fifth Committee would be able to approve the necessary funding. In that context, he called for further support for the Commission's Trust Fund for Symposia, to which the Government of France had just made a most welcome contribution. It represented an important way of disseminating the Commission's work and sensitizing States — particularly developing countries — to its importance.

The meeting rose at 4.45 p.m.